

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SQUARE, INC., and JAMES
MCKELVEY, JR.

Plaintiffs,

vs.

REM HOLDINGS 3, LLC

Defendant.

Civil Action No. 4:10-cv-2243-SNLJ

JURY TRIAL DEMANDED

ROBERT E. MORLEY, JR. and
REM HOLDINGS 3, LLC

Plaintiffs,

vs.

SQUARE, INC., JACK DORSEY, and
JAMES MCKELVEY, JR.

Defendants.

Civil Action No. 4:14-cv-0172-SJLJ

JURY TRIAL DEMANDED
(CONSOLIDATED)

**DEFENDANTS' MOTION TO ADJOURN
ALTERNATIVE DISPUTE RESOLUTION**

Defendants Square, Inc., Jack Dorsey, and James McKelvey, Jr. (collectively, “Defendants”) respectfully move this Court to adjourn the dates in its Order Referring the Case to Alternative Dispute Resolution (“ADR”). In support of this motion, Defendants state:

1. This Court entered an Order Referring Case to ADR on July 22, 2015 [Dkt. #156, in *Morley, et. al v. Square, Inc., et. al*, No. 4:10-cv-02243-SJLJ].¹ The Court's reference is scheduled to terminate on September 18, 2015.

2. The gravamen of Plaintiffs' Complaint is that Robert Morley entered into an oral joint venture agreement with Jack Dorsey and Jim McKelvey in February 2009—entitling him to equal ownership and control over the business that has become Square—and that Messers. Dorsey and McKelvey allegedly breached this agreement by subsequently excluding Dr. Morley from the business. *See* Compl. ¶¶ 35, 44, 50, 55, 72, 81, 82 [Dkt. #1, in *Morley, et. al v. Square, Inc., et. al*, No. 4:14-cv-00172-SJLJ].

3. These allegations form the basis for the majority of Plaintiffs' claims, including breach of joint venture agreement (Count I), breach of fiduciary duty (Count II), unjust enrichment (Count III), civil conspiracy (Count VI), negligent misrepresentation (Count VII), fraud (Count VIII), and fraudulent nondisclosure (Count IX). *See id.* ¶¶ 72, 81, 82, 86, 92, 102, 123-24, 130, 136-38, 141, 151-52, 157.

4. Discovery to date, however—including Dr. Morley's deposition and documents only recently produced, demonstrates that Plaintiffs' core joint venture allegations are recent fabrications, part of a scheme to extort payment from Defendants, and constitute a fraud on this Court. Defendants thus intend to file a motion to compel the production of withheld documents related to this ongoing fraud.

5. In addition, Defendants intend to file a motion to compel the production of other improperly withheld documents, some of which Plaintiffs are refusing to log on their privilege

¹ All docket references refer to the docket in *Morley et al. v. Square, Inc., et al.*, No. 4:10-cv-02243-SJLJ unless otherwise noted.

log based on an erroneous interpretation of this Court's Order Regarding E-Discovery [Dkt. #58, in *Morley, et. al v. Square, Inc., et. al*, No. 4:14-cv-00172-SJLJ].

6. The outcome of Defendants' motions is expected to dramatically change the disputes at issue in this litigation. Defendants thus believe that ADR will be most effective after resolution of the parties' disputes regarding Plaintiffs' privilege log and withheld documents, when the parties have a more complete record on which to assess Plaintiffs' claims.

7. Accordingly, Defendants respectfully request that this Court adjourn the pending ADR termination date, along with all interim dates in this Court's referral order, until one month after the Court renders a decision on Defendants' forthcoming motions to compel. *See* E.D. Mo. LOCAL RULE 16-6.02(A)(2) ("Upon motion of a party for good cause shown, the Court may extend the referral termination deadline.").

Dated: August 19, 2015

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Attorneys for Defendants Square, Inc.; Jack Dorsey; and James McKelvey, Jr.

CERTIFICATE OF SERVICE

I, Jennifer Kingston, hereby certify that on August 19, 2015, the foregoing was served via the electronic filing system of the U.S. District Court for the Eastern District of Missouri on all counsel of record.

/s/ Jennifer Kingston
Jennifer Kingston